BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CHRISTOPHER M. WILLIS	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,027,477
LOCKHART CONSTRUCTION	)	
Respondent	)	
AND	)	
	)	
AMERICAN FAMILY MUTUAL INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the April 25, 2006, Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

This is a claim for a January 16, 2006, accident, which occurred while claimant and Chris Lockhart, respondent's owner, were returning from a job site in Lansing to Mr. Lockhart's home near DeSoto, where respondent maintained its business operations. In the Preliminary Decision, Judge Foerschler awarded claimant preliminary hearing benefits after finding claimant's accident arose out of and in the course of his employment with respondent.

Respondent and its insurance carrier contend Judge Foerschler erred. They argue claimant's accident did not arise out of and in the course of his employment with respondent as claimant had finished his workday and was returning to Mr. Lockhart's home to drop off a tool trailer before meeting co-workers for lunch.

> In the present case, there is no exception that would allow this case to fall outside the Coming and Going Rule. The claimant (and Lockhart) had finished working in Lansing and were done for the day, having left the Lansing job site. At the time of the accident, they were returning to Lockhart's house so that Lockhart could drop off the trailer attached to Lockhart's truck. The claimant presented no evidence that he was planning on engaging in any further work-related activity, other than at some point in the day, working on Lockhart's pole barn – which, as

> previously noted, was not part of his employment-related duties. The two were then planning on attending a social lunch with co-workers and, had the claimant not been trying to save on gas money and had Lockhart not kindly agreed to accommodate him, the claimant would have taken his own car or arrange for his own transportation to return from the job site and to go to lunch. The other three crew members working on the Lansing site had driven their own vehicles that morning to the job site (Tr. 26.) There is no question but that had claimant been in his own car or a co-worker's car at the time of the accident that this would not be compensable. The fact that claimant had hitched a ride with his employer to a job site in order to save gas money and was riding back with his employer from the job site does not change the compensability of his injuries. Therefore, the ALJ erred in finding this matter compensable[.][1]

Conversely, claimant contends the Preliminary Decision should be affirmed. Claimant argues travel was an integral part of his job and that his accident is compensable under the Workers Compensation Act for two reasons. First, claimant argues that business trips should not be treated as divisible and, therefore, his trip back to DeSoto should be considered as arising out of and in the course of his employment with respondent. Second, claimant argues that he had not completed his workday as after lunch he was going to work on Mr. Lockhart's pole barn, which he had done in the past and for which he had been paid.

The only issue on this appeal is whether claimant's accident arose out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes the Preliminary Decision should be affirmed.

Chris Lockhart operated Lockhart Construction out of his home. On January 16, 2006, claimant drove to Mr. Lockhart's home, which is near DeSoto, and rode with Mr. Lockhart to a job site in Lansing. At approximately noon, claimant and Mr. Lockhart completed their work in Lansing and began their return trip to DeSoto. While traveling back to DeSoto, a van pulled in front of Mr. Lockhart's truck, causing an accident. A day or so after the accident, claimant began having symptoms, which prompted him to seek medical treatment.

Before the accident occurred, claimant believed they would take the tool trailer to Mr. Lockhart's house, have lunch with some co-workers, and return to Mr. Lockhart's

[1] Respondent's Brief at 3-4 (filed May 22, 2006).

residence to work on a pole barn he was building. Claimant had been paid for working on that barn on other occasions. On the other hand, on another occasion claimant had volunteered his services and had worked on the barn without pay.

The Board finds travel was an integral part of claimant's job. And claimant's accident occurred before he had completed his work-related travel. In addition, the accident occurred while claimant was in the process of traveling from one work site to another. Accordingly, the Board concludes claimant's accident arose out of and in the course of his employment with respondent.

Respondent and its insurance carrier have argued that claimant was not required to ride with Mr. Lockhart. Therefore, they argue the accident would not have occurred had claimant been driving his own car. The Board finds that argument unpersuasive. The relevant issue is whether claimant's travel was an integral part of his employment, not whether claimant saved money by riding to the various job sites with his employer.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.[2]

WHEREFORE, the Board affirms the April 25, 2006, Preliminary Decision entered by Judge Foerschler.

IT IS SO ORDERED.

Dated this ____ day of June, 2006.

BOARD MEMBER

c: Dale E. Bennett, Attorney for Claimant
Steven J. Quinn, Attorney for Respondent and its Insurance Carrier
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

[2] K.S.A. 44-534a(a)(2).